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The Road to Sokolac: Securing the benefits of ‘Greater-European’ citizenship for forensic psychiatric detainees in Bosnia

The day on which all citizens of Bosnia and Herzegovina (BiH) can claim citizenship of the European Union may remain uncertain, but by their inclusion in the ‘Greater Europe’ of the Council of Europe (‘47 countries, 800 million citizens’), Bosnians can already claim a number of civil rights. Making the claim to a right is one thing, realising it is another. This is evident in the case of one marginal group of citizens: those detained for treatment in secure psychiatric accommodation following a criminal conviction. Prison is associated with marginalisation, as inmates are cut off from society by prison walls and other security measures (although notably a number of features inherited from the Yugoslav prison system can mitigate this isolation). Within the prison system, small groups of forensic psychiatric inmates may be more marginalised still.

The plight of these inmates and the deficiencies in their living conditions, daily regime, and treatment has been recognised by prison authorities and justice ministries of the Federation of Bosnia and Herzegovina (FBiH) and Republika Srpska (RS) and at the level of the state Council of Ministers; it has long been on the agenda of the Council of Europe, one of a limited number of international agencies engaged in long-term work supporting the Bosnian prison systems; and has been highlighted in reports by the Committee for the Prevention of Torture, judicial decisions by the European Court of Human Rights, and reports by international NGOs and domestic Ombudsmen. A definitive solution, whereby all of Bosnia’s forensic psychiatric patients will be housed in a refurbished facility at Sokolac is tantalisingly close, but the question remains why, so many years after this was identified as a priority, does it remain an issue? Political fragmentation in BiH, separating state-level government and international obligations on the one hand from the entity governments with the governmental power to meet those obligations on the other, helps explain a history of limited and slow progress in this area.

FRAGMENTATION AND ITS IMPLICATIONS

The fragmentation of authority in BiH is as evident in the country’s prison systems as in any other sector. State institutions have only a recent and limited role in the field of criminal detention. For now, sentenced inmates are held in entity facilities. Pre-trial inmates are held by the entities and in more recently established facilities under the authority of the Brčko Judicial Commission and the state Ministry of Justice. The entity systems house sentenced detainees

from the courts of Brčko District and the state-level Court of BiH, but that should change in 2013 with the long-awaited opening of a state-level prison for pre-trial and sentenced inmates. The sharing of responsibility for the execution of penal sanctions is not unique to BiH, but in this case it is complicated by the recent history of conflict and the structures which result from the Dayton settlement.

The fragmentation of prison administration has important consequences for prisoners. Division reduces the capacity for flexible responses to overcrowding and for specialist provision for small groups of inmates with particular needs (those remanded for secure psychiatric care, women, juveniles). The pre-war prison system in BiH had one specialist facility for each of these groups, but all three now lie in RS, and only one, the Forensic Psychiatric Unit (FPU) at Sokolac, continues to serve its original purpose under the authority of the RS Ministry of Justice. Forensic psychiatric patients remanded to custody in FBiH have so far been housed in a separate pavilion of the penitentiary at Zenica.

CONDITIONS FOR FORENSIC PSYCHIATRIC PATIENTS IN ZENICA

A series of reports have highlighted the problematic conditions in which psychiatric detainees are held at Zenica. An early assessment of the prison system of FBiH identified the temporary location of 40 forensic psychiatric patients. The main issue identified in 1998 was less about the conditions in which these patients were held, rather that they monopolised the existing medical and therapeutic staff who were then unable to work with the remaining 390 regular pre-trial and sentenced inmates. This reflects the understanding that the Zenica arrangement was only temporary, not one anticipated to continue into 2012. When one of the Council of Europe's expert assessors, Roy Walmsley, revisited the situation in 2001, he found that the unit was holding 69 inmates, in spite of only having capacity for 40. Overcrowding has consistently been a significant issue in FBiH, particularly in Zenica, the entity's only high security facility. For forensic psychiatric patients this has been compounded by the use of dormitory accommodation, with up to 30 individuals sharing a sleeping room without separate daytime accommodation. Overcrowding combines with limited staffing to produce a relatively impoverished detention and treatment regime. As years have passed, the forensic psychiatric inmates of Zenica have experienced poor living conditions and a narrow range of treatments, composed primarily of pharmacotherapy.

These difficulties in providing a certain level of care and a certain quality of environment run counter to values evident in BiH's penal realm. While much mainstream Anglophone research

on punishment identifies a collapse in welfarist and rehabilitative values from the 1970s onwards, BiH was, up to the late 1980s, ideologically insulated from such transformations. The Yugoslav system drew strongly upon work as a form of therapy or social re-education, and included humane and progressive elements such as generous leave so that prisoners might spend time with their families. Citizenship entitlements continued throughout a custodial sentence, with social benefits accruing from work in prison industries. It remains a matter of pride among more long-serving members of the BiH prison systems that delegations from Scandinavia, a beacon of progressive penal policy, came on study visits. Such positive or progressive leanings might suggest a country receptive to alternative transformations focused more on the rights of prisoners as people deprived of liberty and more generally as members of the wider categories of citizens and rights-bearing humans.

GREATER-EUROPEAN CITIZENSHIP AS SOLUTION

Various international instruments governing the treatment of prisoners, ranging from the general to the specific, have been developed over the last 70 or so years. Rod Morgan has done much to analyse one particular branch of the Council of Europe, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). The Committee examines prisons and other sites of detention in member states, and along with the European Court of Human Rights, provides a mechanism to protect the rights of prisoners, including forensic psychiatric patients, as citizens of a greater Europe. Further to this the Council of Europe supports prison systems in new and potential members, providing expertise, technical assistance and training.

The Council and the Joint Steering Group

BiH applied for membership of the Council of Europe in April 1995 at a time when continued conflict left the state's future in doubt. BiH was admitted to the Council in 2002, but cooperation between the country and the Council goes back to 1996 when the Council opened offices in Sarajevo and established contact with entity justice ministries. Under the framework of the *Themis* plan, experts from member states conducted comprehensive visits to prisons in both entities. A Joint Steering Group (JSG) was formed in 2000 with the FBiH and RS justice ministries and it was at the first meeting of this group that the conditions of forensic psychiatric detainees was first identified as a domestic priority. The second meeting of the group in 2001 pointed towards a joint solution, but this broke down when RS authorities, who had agreed to accommodate forensic psychiatric patients from FBiH, sought, and were refused, an FBiH-

contribution to the costs of restructuring their own facilities at Sokolac, while themselves rejecting the recruitment of FBiH staff. Further JSG reports indicated no further progress.

Visits from the CPT and cases at the European Court of Human Rights

The CPT works on the basis of cooperation with signatories to its founding convention, who agree open access to all detention facilities. The Committee follows visits with recommendations and in most instances these are published along with a response from the member-state government. Although the Committee has no powers of enforcement, its findings are a source of pressure on governments to meet their obligations under article 3 of the *European Convention of Human Rights*, which prohibits torture and inhuman or degrading treatment. The Committee first visited in 2003, within a year of BiH ratifying the *Convention for the Protection of Human Rights and Fundamental Freedoms* and *The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*. It visited again in 2004, 2007, 2009 and 2011. The 2004 visit focused specifically on forensic psychiatric units, and while no report was published, it is said to have reinforced findings from the first visit. Acknowledging that Zenica was planned as a temporary solution to FBiH's immediate needs, the first report strongly criticized the insufficient living space, the use of dormitory accommodation and the inadequate number of care staff employed in the annexe. The government of BiH could say little in reply, acknowledging the problems, but observing that the government of FBiH were unable to provide a suitable building to accommodate the inmates.

By late spring 2005, the Council of Europe's local representatives were hopeful with regards to revived attempts to find a solution involving the RS-based Sokolac FPU serving the whole country, either under the authority of the state-level government or under RS-authority. This optimism may have been encouraged by a friendly settlement following one of a number of cases at the European Court of Human Rights concerning Zenica inmates. In the midst of the CPT's many visits, one patient, Fikret Hadžić, had brought his plight to the attention of the Court (*Hadžić v Bosnia and Herzegovina*), focusing on conditions of detention, poor inmate security, and poor access to medical treatment. His claims were backed by evidence from the 2004 CPT report and a report by the FBiH Ombudsman. Although the Court did not pass a final judgment in this case, it endorsed a friendly settlement in which the government of BiH promised to move the Zenica inmates by the end of 2005. As is evident from the next CPT visit in 2007 the annexe at Zenica was still in use.

The state-level Ministry of Justice focus on the Hadžić case in their response to the CPT's 2007 recommendations. By then, the BiH Council of Ministers had responded with a decision to form an inter-departmental working group, not entirely dissimilar from the earlier JSG. This led to a memorandum of understanding between state and entity justice ministries and the District of Brčko Judicial Commission on housing *all* BiH's forensic psychiatric patients at the Sokolac FPU, a contract between the relevant agencies to ensure costs were borne by the relevant governments, and the establishment and funding of a project to restore the Sokolac facility. Yet the project was held up at the time of the state-level ministry's response while the ministry waited for the government of Republika Srpska and the Municipality of Sokolac to clarify details of who owned the FPU facility.

As time has passed, this solution has remained elusive. In the interim, declining patient numbers at Zenica supported a Court judgment that conditions no longer amounted to inhuman or degrading treatment by the standards of the court (*Halilović v Bosnia and Herzegovina*). While the Court was satisfied that the Article 3 rights of Mr Halilović were not infringed, the 2009 report of the CPT did not share the Court's confidence. The Zenica patients had been relocated to a newly refurbished unit at Zenica, but the Committee's language makes clear their frustration with the time that had elapsed since the problem had first been identified. Notwithstanding improvements moving towards an appropriate recognition of the dignity of inmates, the Committee felt that the accommodation still fell short in failing to provide any kind of day room, and staffing remained inadequate. The 2011 report identified that accommodation at Zenica was still not fit for the numbers held there, and that insufficient levels of specialist medical staff meant that inmates, treated largely through pharmacotherapy, were often under the supervision of an individual prison officer.

THE SITUATION TODAY: RIGHTS TOMORROW?

The most recent visit of the CPT does, however, show concrete signs of progress towards the Sokolac solution, first identified by the JSG in 2000. With agreements in place to allow the transfer of detainees from FBiH to RS, reconstruction of the facility was more or less complete. The Committee were concerned that refurbishment was slowing. The government of BiH responded in April of this year, identifying a shortfall of around €820,000 required to equip the facility, a matter that was raised at the BiH Council of Ministers in May. The project has reached its greatest level of advancement yet, and it is difficult to imagine that having come so far, the various parties will pull back from a solution that promises to address a longstanding gap

between rights provided in European conventions and conditions of detention provided by various governmental authorities in BiH. While progress has been slow, the convention rights and the institutions established to protect these have kept the plight of the Zenica inmates on the political agenda, making it a problem that would not go away.

The intersection of domestic penal politics and territorial politics in BiH with the greater European *rights-scape* has proved to be swampy ground for those keen to resolve the unsatisfactory conditions and regime experienced by the forensic psychiatric inmates of the Federation. Given the progressive nature of certain aspects of pre-war prison regimes in Yugoslavia, and the early recognition of the problem as a priority by domestic and international actors, a speedier solution might well have been anticipated by those most directly involved. Ultimately it has taken countless meetings, two cases at the European Court of Human Rights, five visits from the Committee for the Prevention of Torture, Ombudsman's reports and mentions in reports from Amnesty International, the Helsinki Federation, the OSCE and the UN Human Rights Committee. In the face of the state's obligations to deliver the rights of greater European citizenship to this particular marginal group, the difficulty of coordinating multiple systems and levels of authority and agreeing the transfer of resources have been major obstacles. The solution, in which one entity becomes a specialist provider on behalf of all levels of government in the country may prove a way to build the kind of functional system that can deliver rights without having to challenge those entity-level competences that are most carefully guarded against expansion of state-level bodies.

This paper has been compiled using a range of reports from the agencies and organisations whose work is reviewed, and draws on interview data collected in BiH in 2004 and 2005. An earlier, more detailed, and fully referenced account of efforts to improve conditions of the Zenica detainees was published in the journal Criminology and Criminal Justice in 2010.